



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 3, 1939

Mr. Karl Cayton
County Attorney
Dawson County
Lamesa, Texas

Dear Sir:

Opinion No. O-489
Re: Proper division of fine when only
part of costs are paid in justice
court.

With further reference to your letter of
February 28th, kindly be advised that this Department
has considered your request for an opinion as contained
in the second paragraph thereof.

Your question concerns the proper division of
a sum collected less than the fine assessed against a
defendant on being convicted in the justice court and
you desire to know how the money collected on the fine
and costs are to be divided. In this connection, per-
mit us to set forth the last portion of your letter by
way of illustration and by which we shall be guided in
answering your request:

"John Doe is convicted on a misdemeanor.
He is fined \$1.00 and costs, making a total
of \$15.00. John Doe spends four days in jail
on his fine and friend comes up and pays the
balance. For his four days in jail, John Doe
receives \$6.00 on his fine. His friend pays
\$9.00. How is the money to be divided where
the officers and county attorney and J. P.
are on a fee basis? And the same circumstances
except where the arresting officer has some
mileage on the arrest."

Article 949 of the 1925 Revised Code of Crimin-

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al Procedure provides:

Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this Code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county after first deducting therefrom the legal fees and commissions for collecting the same."

The statutes do not provide specifically for such situation as presented in your request, however, this Department has recently held where only a part of a fine and costs are collected, that the money collected should go first to the payment of the costs and the balance, if any, to the amount of the fine and that where there is not enough collected to pay all of the costs, the money collected should be pro-rated. In such a case, one officer has no priority over another.

Article 1052, as amended, Revised Code of Criminal Procedure 1925, and its relevant portions providing for the justice of the peace fee is as follows:

"....provided, however, that in all counties having a population of 20,000 or less, the justice of the peace shall receive a trial fee of \$3.00."

Article 1054, as amended, Revised Code of Criminal Procedure 1925, reads in part as follows:

"....and in the justice court the trial fee shall be the sum of \$4.00."

In view of the trial fee above provided, being a part of the costs, and by reason of which the justice of the peace is paid therefrom by the county, it is our view that the \$9.00 in question will be pro-rated as in your letter on the basis of \$5.00 to the county attorney; \$5.00 to the constable and \$4.00 to the county, which

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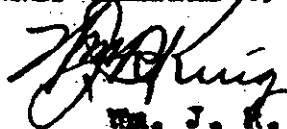
figures approximately 64.3 and fraction cents on the dollar. The county would, of course, get its pro-rated part less commissions payable. Any mileage fees due the constable would be figured on the same basis.

It is, therefore, the opinion of this Department that where a conviction is had in the justice court and only a part of the costs are collected, that said sum should be pro-rated between the officers and county in the same proportion as to which each would have been entitled to receive therefrom had all costs been collected.

Very truly yours

ATTORNEY GENERAL OF TEXAS

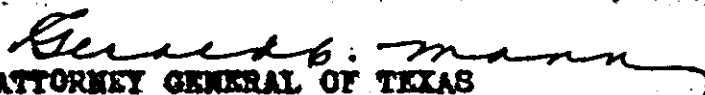
By



Wm. J. R. King
Assistant

WmK:AW

APPROVED:


ATTORNEY GENERAL OF TEXAS

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